

The Post and Courier

134 Columbus Street

CHARLESTON, SC 29403-4800

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12/06/2018

Dear Sheriff Underwood,

The Post and Courier submits the following and second request under the South Carolina Freedom of Information Act:

- 1. All invoices and receipts from True Value, Ezell Hardware and Tractor Supply received by the County Sheriffs Department and Detention Center from 2016 through the present.**
- 2. Any expenses incurred by the sheriffs' department in connection with the national sheriffs' association meeting in New Orleans. This would include but not be limited to receipts, mileage requests and p-card charges by all deputies and associates who attended.**

Please waive all fees. This matter is in the public interest because it contributes to the public's understanding of government activities and expenditures. If a fee is required, please contact me before starting any work.

If you choose to deny part or any of this request, please cite the exemption upon which you base your denial and a summary of the information being withheld.

Thank you for your attention to this request, and please don't hesitate to contact us if you have any questions.

Sincerely,

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MEMO
ATTORNEY CLIENT PRIVILEGED

TO: Chester County Council members

FROM: Joanie Winters, Chester County Attorney

DATE: January 8, 2019

RE: Request from Sheriff for personnel wage changes

Recently the Sheriff presented two MOU's to the County Supervisor that would essentially freeze several positions and he requested that the money budgeted for those positions be reallocated to current employees in the Detention Center and E911. This had been done in February for Patrol Officers at the same time as budget workshops were going on and the organization charts were being approved.

The question for discussion is (a) does such a request require approval from County Council; (b) does the Sheriff have this level of authority to move money from one budget category to another; and (c) has this been done with other departments in a similar manner as is being requested by the Sheriff?

- (a) S.C. Code of Laws provides, "*County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budget adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.*"

*Council may make supplemental appropriations which shall specify the source of funds for such appropriations. The **procedure for approval of supplemental***

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appropriations shall be the same as that prescribed for enactment of ordinances.¹

The definition of a “supplemental appropriation” is an appropriation of additional funds which have come available during the fiscal year and which have not been previously obligated by the current operating or capital budget. While we may be able to argue that funds will come available during **this** fiscal year if these positions are frozen but the caveat that these funds were not previously obligated cannot be met in this instance. Further, in conversation with Tommy it is my understanding that positions that are “frozen” are not funded so while the positions we are talking about here were likely funded in this budget cycle since there was no previous mention of freezing these particular positions, that will only cover this fiscal year. The fiscal cycle for 2019-2020 will not include funding for these frozen positions and thus the funding for these increases will have to be added into the 2019-2020 budget. This becomes problematic under a SC Attorney General’s Opinion² where the AG has stated that salaries incurred during one fiscal year may be paid only from funds appropriated for that particular year. The County would have to re-appropriate these funds each year. As you know, the County **may not** decrease the budget of the Sheriff so once the funding is added on, it must remain.

If these increases were to be considered “supplemental appropriations” you can see where I have boldfaced the language in the statute that requires this to be done in the same fashion as an ordinance.

Under S.C. Code §4-9-420(4) and (5), the County Supervisor is responsible for the preparation of the annual operating and capital improvement budgets and to supervise the expenditure of funds appropriated by council but it is council who must take the legislative action of adopting and appropriating the budget.

Through the enactment of the Home Rule Act³, counties have broad authority and discretion in its determination of appropriation of funds for county purposes.⁴ The key phrase here is “county purposes” and in that manner, a county council typically funds annually for the

¹ S.C. Code §4-9-140.

² SC 1984 Op Atty Gen. No. 84-48, P. 118.

³ Now codified as Sections 4-9-10 et seq of the Code.

⁴ 1984 Op. Atty. Gen., No. 84-66, June 11, 1984.

THE INFORMATION CONTAINED IN THIS MEMO MESSAGE IS ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE.

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operation of a county sheriff's department. In an opinion dated February 7, 1978 the SC Attorney General stated:

"...while it is true that the council exercises totally the budgetary authority of... (a)....county and, consequently can decrease, increase or otherwise alter appropriations for specific county offices and functions...nevertheless, it cannot so decrease the appropriations of an elected official's office as to prevent the proper functioning thereof..."

This is confirmed in a recent AG Opinion⁵ where the Attorney General reasserted this same position stating:

While county council is vested with discretion in dealing with many appropriations from standpoint of general economic and efficiency concerns, such discretion may not be utilized in manner which would interfere with decisions of sheriff as to hiring and discharge of deputy sheriff. Thus it is extremely doubtful whether action could be taken by county council to withdraw appropriation for position of particular deputy sheriff. Such could be construed as indirectly terminating particular deputy sheriff's position which is a position county council is not empowered to abolish directly.

This is not the case at hand; Council is not attempting to eliminate any position. In fact it is the Sheriff who is requesting the 'freezing' of positions but not the elimination. This is but an example of what the Attorney General believes to be the interference of a council by not budgeting for the proper function of a department.

In other words, as long as the appropriations sufficiently allow county offices and functions to operation properly, council has broad authority. However, the AG has stated that such a determination is a 'factual' one, meaning not one for opinion.

(b) County ordinance is silent on the specific movement of funds from one category to the other but does say:

The budget ordinance may provide for expenditure of contingency funds, and transfer of funds between line items or departments by the county supervisor

⁵ 1991 Op Atty. Gen. No. 91-48, p. 123.

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within limits set by the council.⁶

The Code does not define those limits but does give this authority to the County Supervisor.

Chester County Code §26-26 does provide that the budget may be amended by council during the fiscal year by addition, to deletion of, or transfer of any item as long as the total amended estimated expenditures do not exceed total anticipated revenue. State law previously cited requires this to be done by ordinance.

(c) There is no written procedure or County Code for the process of wage increase but it is my understanding that they are frequent and done strictly by the submission of a request to Human Resources as approved by the County Supervisor. This is a process situation that should be discussed outside of the legal discussion herein since it is one that can be addressed by Council. I have a concern here that these increases have been promised to these employees and they are counting on them. They could file a lawsuit based on detrimental reliance or even breach of promise (contract). My thought would be that if the Sheriff would agree to eliminate the number of positions that it would take to fund these increases, Council could approve it on that basis since the funding would then transcend the requisite budget years. However, we must keep in mind the caveat I stated earlier where the Council cannot decrease the Sheriff's budget if it where to impeded his ability to provide adequate law enforcement services to the County. For that reason, I don't believe we could require him to make this exchange.

⁶ Chester County Code §26-25